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Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25; Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143

NCTA – The Internet & Television Association ("NCTA") respectfully submits this letter to respond to the *ex parte* letter filed by Starry, Inc., a provider of wireless broadband services.[1] Starry posits a hypothetical concern that IP-based BDS providers that offer services on a private carriage basis will refuse to offer Starry backhaul on just, reasonable and non-discriminatory terms. As a remedy, it proposes that the Commission invoke Title I and section 706 to impose Title II-like obligations on BDS providers' private carriage offerings. For the reasons explained below, the Commission should reject Starry's eleventh-hour attempt to impose unwarranted obligations on competitive BDS providers.

As an initial matter, the concerns expressed by Starry are wholly speculative. It provides no evidence that it has been unable to acquire the IP-based services it needs, nor is there any evidence to suggest that it will be unable to do so going forward. The record makes clear that wireless providers are among the most desirable customers for BDS providers and there is every reason to believe that wireless providers will continue to be best served by marketplace competition, not price regulation that discourages investment in the fiber networks such providers rely on.[2]

Starry's focus on regulating cable operators that offer service on a private carrier basis is particularly unwarranted. Cable operators and other competitive providers always compete with at least one other provider – the incumbent LEC – and often multiple providers, particularly in the urban areas where Starry indicates it will provide its wireless services.[3] As a result, the *Draft*

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[1] Letter from Virginia Lam Abrams, Starry Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 16-143, 13-5,05-25 & RM—10593 (filed April 12, 2017).

[2] NCTA Comments at 65-69.

[3] *See, e.g., Draft BDS Report and Order* at ¶ 77 (noting AT&T identified a number of major urban areas that had as many as 28 competitive transport providers and cited a number of second tier MSAs with over a dozen separate competitive transport providers). Moreover, the *Draft BDS Report and Order's* finds that private

BDS Report and Order correctly notes that the competitive BDS providers found to offer private carriage BDS lack market power.[4] Given this unquestioned lack of market power, there is simply no legal or policy basis for adopting Starry's recommendation to impose Title II-like rate regulation on private carriers.[5]

Respectfully submitted,

/s/ Steven F. Morris

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carriage is used by many types of providers, not just cable operators. *Draft BDS Report and Order* at ¶¶ 262, 265.

4 *Draft BDS Report and Order* at ¶ 270. The *Draft BDS Report and Order's* finding that cable companies and other competitive providers lack market power is amply supported by the record. *See, e.g.*, NCTA Reply Comments at 24-25.

5 *See, e.g.*, NCTA Reply Comments at 55 ("Rather, the Commission and the courts have established that the Commission's power to impose common carrier regulation is tightly circumscribed, and does not extend to treating non-common carriers as common carriers. The Commission itself has held that it will not impose a general duty to provide service indiscriminately unless a provider has market power, which all competitive BDS providers lack.").